



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2004

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2004-5504

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204660.

The Conroe Police Department (the "department") received a request for dispatch tapes and dispatch logs, Mobile Data Terminal and Computer Aided Dispatch system logs, accident reports, and other information relating to the arrest of the requestor's client on November 2, 2003. You state that the department has released the ST-3 Texas Peace Officer's Accident Report form contained in the submitted documents to the requestor. *See* Transp. Code § 550.065(b). You claim, however, that portions of the remaining submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an intoxilyzer report containing an analysis of a breath specimen taken from the requestor's client pursuant to the arrest at issue. Full information concerning the analysis of a breath specimen must be made available upon the request of the person who has given the specimen at the request of a peace officer. Transp. Code § 724.018. Accordingly, the department must release the submitted intoxilyzer report, which we have marked, to the requestor.

We next address your claim under section 552.108 with respect to the remaining submitted information. Section 552.108(a) of the Government Code excepts from disclosure

“[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information that is public under *Houston Chronicle* includes an arrestee’s social security number. 531 S.W.2d at 180, 187-88. Thus, the social security number of the requestor’s client is not excepted under section 552.108.

You contend that the social security number at issue is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. A social security number may be excepted in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* You indicate that the social security number of the arrestee in this case is confidential under section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety (“DPS”) shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules “may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . .” Although you indicate that the department obtained and maintains the social security number information at issue in part to obtain criminal history information from DPS, you do not inform us whether DPS actually requires or required the department to submit the social security number at issue. Thus, we determine

that if DPS actually requires or required the department to submit social security numbers to DPS in connection with a request for criminal history information, then the social security number at issue is confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. If DPS does not actually require the department to submit the social security number at issue with a request for criminal history information, the social security number is not confidential under the Social Security Act and must be released.

In summary, the marked intoxilyzer report must be released to the requestor. With the exception of basic information, which must be released, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. If DPS requires the department to submit the social security number at issue, the social security number is confidential under section 552.101 in conjunction with federal law and must be withheld. Otherwise, the social security number must be released as basic information. Based on these findings, we need not reach your remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 204660

Enc: Submitted documents

c: Mr. Kevin Fine
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(w/o enclosures)